

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CCP No.81/2008 in CS(OS) No.289/2008**

% **Date of Decision: 06.04.2009**

Mrs.Rita Khattar Petitioner
Through Mr.Naresh K. Thanai, Advocate

Versus

Shri R. Singh and another Respondents
Through Mr.Ashok Mathur and Mr.S.K. Mathur,
Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. This is a petition under Section 11 and 12 of Contempt of Courts Act by the petitioner against the respondents for allegedly disobeying the order dated 28th March, 2008. The petitioner is alleged to be the owner of a plot adjoining the 9th Unit bearing No.30, Empire Estate, M.G. Road, New Delhi. The petitioner alleged that the said plot was purchased by the petitioner vide sale deed dated 29th September, 1992 from Mrs.Sandhya Jain.

2. The petitioner contended that the respondent instituted a suit for permanent and mandatory injunction seeking restraint against other

defendants including the petitioner from using the passage/path way situated between units bearing No.20 to 30, Empire Apartments, M.G. Road, New Delhi. It is contended by the petitioner that by order dated 13th February, 2008, the petitioner and other defendants were restrained from using the passage to the farm house as public road.

3. The petitioner contended that the adjoining to plot No.30 there is another plot owned by petitioner which forms part of *Lal Dora*/village abadi and adjoining to the plot of the petitioner is a farm house owned by Shri Naresh Khattar which forms part of agricultural land. Petitioner asserted that passage in question is in existence and was used by the petitioner and her family members for the last 10 years. It is pleaded that the entire passage leading from main road, i.e. M.G. Road till plot owned by the petitioner is carved out of the land owned by various individuals/companies etc. and is being used by the residents, their family members and the visitors.

4. On the basis of the contention raised by the petitioner, arguments were heard on 29th February, 2008 and case was adjourned to 12th March, 2008. On 28th March, 2008, this Court passed the following order:-

“1. The instant suit has been filed by the plaintiffs against defendants claiming that plaintiffs were sold houses No. 22 to 30 at Empire Estate, Mehrauli Gurgaon Road, New Delhi and defendant No.1 was one of the sellers. There was a garage portion, opposite to each house. The colony

Empire Estate was carved out of the agricultural land and the plaintiffs have paid the price of entire land comprised in the plot, garage as well as the path/road in between the garage and the plot. The garages on each plot were situated across the road/opposite the plot. The road/path between plots and the garage was a private road to the plot holders and it was not a public passage, however, defendant No.1 wanted to open the passage at the end of the road into his farm house known as Khattar farms and also wanted to make this road a public passage so that it is used as a road to connect the farm house for marriage functions and other recreational parties organized in the farm house. An ad interim injunction was granted against defendants from making the passage as a public passage on 13th February 2008.

2. During arguments, counsel for the defendants submitted that defendant No.1 himself is the owner of one of the plots in that row and the last plot was owned by him. Defendant had no intention of making the passage as a public passage and defendant No.1 merely wanted an entry for him as well as his family members and relatives into the farm house, adjoining the said plot.

3. It is not disputed by the plaintiff that the last plot in the row belonged to the defendant and defendant has a right to use the passage for this plot/future house. In order to see that the said passage is used by the defendant No.1 and his family members and not as a public passage for marriage functions and other recreational functions organized in the farm house so as to encroach upon the privacy of other plot holders, defendants fairly agreed that the passage shall not be used as a public passage and the defendants shall have an opening through its own plot into the farm house and that opening shall be used for relatives and family members of the defendants. I consider that the submission made by the defendant No.1 is quite reasonable. Defendant No.1 being owner of one of the last plot, has a right to use this plot in the manner he likes without encroaching upon the privacy of the other plot holders.

4. It is, therefore, ordered that the passage between the plots and the garages may be closed at the farm-house end by the plaintiffs so as to prevent its use as a public passage. However, defendant No.1 shall have the liberty to have an opening into his farm house from his own plot,

which is last plot in the row with the condition that the passage/gate shall be used by the defendant No.1 and his family members for the purpose of egress and ingress into the farm house only through plot and this egress and ingress shall not be used for the purpose of marriage functions, recreational parties or large gatherings etc. during pendency of this suit.

5. With above directions, both the applications stand disposed of.

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Replication be filed within four weeks. All original documents be filed by both parties. Parties to appear before the Joint Registrar for admission/denial of documents on 22nd May 2008.”

5. The grievance of the petitioner is that on 13th April, 2008, respondents knowing that there would not be any obstacle in their way, started constructing a wall between unit bearing No.30 and the plot owned by the petitioner so as to block the access to the said plot, i.e., the plot owned by the petitioner. According to the petitioner, even in January 2008 an attempt was made by the respondent to construct the wall. The attempt was thwarted by the petitioner and a complaint was also lodged with the Police on 13th April, 2008. According to the petitioner, the attempt to raise a wall so as to obstruct the egress and ingress to the plot owned by the petitioner is willful disobedience of the order and directions passed by the court and in the circumstances the respondents have committed contempt of court and therefore, action be initiated against the respondents for committing contempt of this Court.

6. The respondents have contested the petition and has contended that the application has been filed by the petitioner with malafide intention to pressurize the respondents so as to prevent them from initiating any contempt proceedings against the petitioner. Regarding respondent No.2, it is contended that he has been impleaded malafidely as on 8th April, 2008 he had undergone an eye operation and he was admitted for eye operation on 5th April, 2008 and was discharged on 9th April, 2008. The respondent No.2 was not present at the site of alleged construction of wall on 13th April, 2008. The respondents have further contended that unit No.30 is owned by defendant No.2/petitioner which plot is connected with the farm house owned by her husband, Mr.Naresh Khattar, defendant No.1. It is pleaded that by order dated 28th March, 2008, the Court had permitted the defendant No.1 to have an opening into his farm house from his own plot, which is the last plot in the road with the condition that the passage/gate shall be used by defendant No.1 and his family members for the purpose of egress and ingress into the farm house only through the plot and the egress and ingress shall not be used for the purpose of marriage functions, recreation parties or large gatherings etc. The respondents have also contended that in terms of order dated 28th March, 2008, it has been ordered that the passage between the plot and garage (House No.22 to 30) may be closed at the farm house end (House No.30) so as to prevent its use as public passage. It is contended that the plaintiffs are, therefore, entitled to raise a wall/gates so as to control the egress and

ingress to the adjoining plot owned by the defendant No.2 and in the circumstances they have not committed any contempt of the order dated 28th March, 2008. It is further contended that by letter dated 12th April, 2008 they had intimated the SHO, Police Station Mehrauli, about the passing of order dated 28th March, 2008 and about the alleged permission granted to the plaintiffs for raising a wall separating the land of Mr.Khattar (defendant No.1) from that of the plaintiffs. It is, however, contended that the police is hand-in-glove with the petitioner and are not ensuring the compliance of the said order. In the circumstances, it is contended that there is no willful or intentional violation of order dated 18th March, 2008 and the contempt petition is liable to be dismissed.

7. By order dated 28th March, 2008, the plaintiffs were permitted to close the passage between the plots and the garage at the farm house end so as to prevent its use as a public passage. While permitting the plaintiffs to close the passage, the defendant No.1 was also permitted to have an opening into his farm house from his own plot of land in the row with the condition that the passage/gate shall be used by the defendant No.1 and his family members for the purpose of egress and ingress into the farm house only through plot and that the egress and ingress shall not be used for the purpose of marriage functions, any recreational parties or large gatherings during the pendency of the suit. Since the plaintiff was permitted to close the passage between the plots

and the garage at the farm house owned by the plaintiff so as to prevent its use as a public passage, prima facie the allegations made against the plaintiff shall not constitute willful and deliberate violation of the order dated 28th March, 2008 passed by this Court. This is not the case of the petitioner that the wall has been constructed in such a manner so as to prevent the ingress and egress of the petitioner completely. The plaintiffs had been permitted to secure the passage in such a manner so that it was not used for marriage functions and other recreational purposes. The plea of the respondents is that they were constructing a wall with the gate/door so as to give access to the petitioner. In the circumstances, the action of the respondents would not constitute violation of the order dated 28th March, 2008.

8. This is no more disputable that exercise of power within the meaning of the Contempt of Courts Act of 1971 is comparatively a rarity and should be used sparingly and in the larger interest of society and for proper administration of justice. It is also true and noticed that mere disobedience of an order may not be sufficient to amount to a " Civil Contempt" within the meaning of Section 2 (b) of the Act of 1971. The element of willingness and intention is an indispensable requirement to take action. It is also true that if two interpretations are possible as to the action of the alleged contemnor and one of such interpretations raises doubts as to the willful nature of his conduct, contempt will not be made out. The Supreme Court of India in the case *Perspective*

Publications (Pvt.) Ltd. v. State of Maharashtra (AIR 1971 SC 221) has observed at page 230, inter alia thus:

“The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.” (Per Grover, J.) Contempt of Court is essentially a matter which concerns the administration of justice and the dignity and authority of judicial Tribunals. It is not a right of a party to be invoked for the redress of his grievances. It is not also a mode by which the rights of a party, adjudicated upon by a Tribunal can be enforced against another party. Moreover, if the matter, as in the present case, requires a detailed inquiry, it must be left to the Court which passed the order and which presumably is fully acquainted with the subject-matter of its own order. When the matter relates to mere infringement of an order, as between parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order, merely because other remedies may take time or are more circumlocutory in character. Contempt jurisdiction should be reserved for what essentially brings the administration of justice into contempt or unduly weakens it (vide (1964) 68 Cal WN 148, AIR 1951 Pat 231, AIR 1966 Mad 21 and AIR 1971 ALL 231).

9. Having carefully considered the allegations made in the contempt petition it is apparent that the actions of the respondents do not fall within the ambit of Contempt of Courts. No undertaking was given to or accepted by the Court. Matter relates to mere alleged infringement of an order passed in a litigation between the parties. Contempt jurisdiction is not to be invoked for redressal of petitioner's grievances.

10. In the circumstances, petition for initiating contempt proceedings against the respondents is dismissed and notice issued to the respondents is discharged. However, it is also observed that the

petitioner shall be entitled to take such other remedies as are available to her in the suit pending between the parties, in case of any alleged violation of order dated 28th March, 2008.

April 06, 2009
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ANIL KUMAR, J.